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**FEDERAL COMMUNICATIONS COMMISSION
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of

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Amendment to the Commission's Rules to

)

Establish Part 27, the Wireless

)

Communications Services ("WCS")

)

GN Docket No. 96-228

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**REPLY COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

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THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA") respectfully submits its reply comments regarding the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding.¹ The record in this proceeding supports PCIA's suggestions that: (1) nationwide licensing for WCS is not in the public interest; (2) spectrum should be allocated in paired blocks that are small enough to support multiple licensees per area; (3) the Commission should allocate the WCS for a defined set of services, such as interactive, high-speed data services; and (4) any WCS providers that offer CMRS should be subject to a spectrum cap and build-out requirements.

I. INTRODUCTION AND SUMMARY

Other commenters in this proceeding have expressed broad support for the positions taken by PCIA in its opening round comments regarding how WCS spectrum

¹ FCC 96-441 (Nov. 12, 1996) ("*Notice*").

should be allocated, and what rules should apply to this new service. Specifically, there was virtually unanimous support for PCIA's opposition to nationwide licensing. In arguing against such a licensing scheme, commenters joined PCIA in pointing out that nationwide licensing is anti-competitive, will slow the deployment of the WCS in rural areas, will do grave damage to the ability of PCS providers to initiate service, and will raise less revenue at auction. Therefore, many parties joined PCIA in arguing that MTA-based license areas would best serve the public interest.

There was also broad consensus on the fact that the bandwidth of the allocated blocks of spectrum should be narrow enough to allow for multiple licensees in any area and paired to allow for two-way services. A paired allocation of between 5 and 10 MHz would facilitate the development of competition between a number of providers of innovative data services in each license area.

Many commenters further agreed with PCIA that the Commission should reserve WCS for a focused set of services such as interactive, high-speed data services. By imposing a structure on the WCS spectrum, the Commission will make it possible for equipment manufacturers and service providers to develop WCS business plans, thereby encouraging the development of new technologies and innovative services. By contrast, failure to provide the industry with such guidance might result in the WCS spectrum lying fallow, as no service or group of services develops the "critical mass" required to achieve commercial success. Some parties further joined PCIA in favoring the exclusion of broadband commercial mobile services from the WCS, given the

current plethora of spectrum available for such CMRS, and the challenges facing PCS auction winners.

Finally, a significant number of commenters endorsed PCIA's assertion that the regulatory parity requires application of the same build-out requirements and spectrum cap to WCS licensees that apply to existing CMRS licensees. These parties echoed PCIA's concern that by regulating similar services in a similar fashion, fair competition would be encouraged.

II. VIRTUALLY ALL COMMENTERS AGREE THAT NATIONWIDE LICENSING FOR THE WCS IS NOT IN THE PUBLIC INTEREST

In its opening round comments, PCIA described four reasons why nationwide licensing for the WCS is not in the public interest. First, nationwide licenses will be so expensive that only a few large entities will be able to bid in the WCS auction. This will lead to less competition in WCS, as well as effectively depriving small businesses of the opportunity to participate in this service. Second, during the long period of time it takes to build-out nationwide service areas, the public will be deprived of service, a problem which will be particularly acute in rural and sparsely populated areas. Third, adoption of nationwide license areas will undermine the reasonable expectations of those that invested in broadband PCS licenses, and make it more difficult for broadband licensees to raise sufficient capital to build-out their networks. Finally, the broadband PCS auctions demonstrated that smaller service areas raise more money at auction than larger service areas.

Virtually all commenters² agreed with PCIA that nationwide licensing for the WCS represents bad public policy. Regarding the anti-competitive aspects of nationwide licensing, Bell Atlantic NYNEX Mobile, Inc. ("Bell Atlantic/NYNEX") argued that adopting regional or national WCS licensing areas would limit the number of licenses available for competitive bidding, thereby limiting the diversity of competitors, and pricing licenses out of the reach of small entities.³ ALLTEL Mobile Communications, Inc. ("ALLTEL") added that nationwide licensing would prejudice the size of the auction participants towards large entities, and the services to be offered toward mobile services that benefit from large, seamless service areas.⁴

Regarding the detrimental impact of nationwide licensing on rural areas, AirTouch Communications, Inc. ("AirTouch") stated that nationwide WCS licensing would undermine the objectives of Section 309(j) of the Communications Act⁵ by

² The only commenter favoring a nationwide allocation was the Markle Foundation, which favored the creation of a nationwide wireless data network through the use of nationwide licensing. Comments of The Markle Foundation, GN Docket No. 96-228, at 2-8 (filed Dec. 4, 1996).

³ Comments of Bell Atlantic NYNEX Mobile, Inc., GN Docket No. 96-228, at 6-8 (filed Dec. 4, 1996) ("Bell Atlantic/NYNEX Comments"). *See also* Comments of Pacific Telesis Group, GN Docket No. 96-228, at 3 (filed Dec. 4, 1996) ("Pacific Telesis Group Comments") (a nationwide service area would limit the number of licensees and result in less competition, since a nationwide licensee is unlikely to grant spectrum to its competitors).

⁴ Comments of ALLTEL Mobile Communications, Inc., GN Docket No. 96-228, at 3-4 (filed Dec. 4, 1996) ("ALLTEL Comments").

⁵ 47 U.S.C. § 309(j)(3)(A) (stating that one of the purposes to be promoted by competitive bidding is to ensure the "rapid deployment of new technologies" for those residing in "rural areas").

delaying service to less populated areas of the nation.⁶ GTE Service Corp. ("GTE") added that large license areas may result in the effective exclusion of sparsely inhabited areas in favor of the more profitable and more easily serviced population centers.⁷

Further, a number of commenters joined PCIA in addressing the disruptive effect that nationwide licensing would have on broadband PCS. PrimeCo Personal Communications, L.P. ("PrimeCo") noted that PCS licenses were awarded on an MTA basis with a reasonable expectation that licensees would not face nationwide competition.⁸ Therefore, the issuance of nationwide licenses substantially devalues these MTA-based licenses⁹ at a time when PCS licensees -- many of which are small businesses -- are already hard pressed to raise capital for network build-out.¹⁰ Similarly, other commenters added that it was unfair to require PCS providers to

⁶ Comments of AirTouch Communications, Inc., GN Docket No. 96-228, at 6-7 (filed Dec. 4, 1996) ("AirTouch Comments"). *See also* Comments of GTE Service Corp., GN Docket No. 96-228, at 4 (filed Dec. 4 1996) ("GTE Comments"); Comments of the Rural Telecommunications Group, GN Docket No. 96-228, at 4-5 (filed Dec. 4, 1996).

⁷ GTE Comments at 4.

⁸ Comments of PrimeCo Personal Communications, L.P., GN Docket No. 96-228, at 10 (filed Dec. 4, 1996) ("PrimeCo Comments").

⁹ *See* Comments of Omnipoint Corp., GN Docket No. 96-228, at 12-13 (filed Dec. 4, 1996) ("Omnipoint Comments"); Comments of the Industrial Telecommunications Ass'n., Inc., GN Docket No. 96-228, at 6 (filed Dec. 4, 1996).

¹⁰ *See* Comments of ADC Telecommunications, Inc., GN Docket No. 96-228, at 15-17 (filed Dec. 4, 1996) ("ADC Comments"). *See also* Comments of the Competition Policy Institute, GN Docket No. 96-228, at 5 (filed Dec. 4, 1996) ("CPI Comments") (the Commission should consider the effect of nationwide licenses on the ability of PCS licensees to obtain financing and build-out their systems).

aggregate spectrum on a market-by-market basis in order to create a nationwide presence while granting WCS licensees nationwide allocations in a single stroke.¹¹

Finally, there was widespread agreement with PCIA's contention that nationwide licensing areas will likely raise less revenue at auction than MTA- or BTA-based licensing areas. Pocket Communications, Inc. ("Pocket") cited the Wireless Telecommunications Bureau's "International Survey of Spectrum Assignment for Cellular and PCS" for the proposition that regional, as opposed to national licensing areas, lead to more successful auctions.¹² Similarly, Bell Atlantic/NYNEX pointed to the fact that the PCS auctions demonstrated that smaller licensing areas actually generate more auction revenue.¹³

A. There Is Substantial Consensus That WCS Should Be Licensed For MTA-Based Service Areas

In its opening round comments, PCIA pointed to a number of reasons why the use of MTA-based areas -- rather than nationwide areas -- was in the public interest. First, the fact that there are fifty-one MTAs in the United States, and there will probably be two or three licensees per MTA, means the opportunities for entry into the wireless telecommunications industry will be increased. Second, MTAs are sized such that they strike the proper balance between areas that are too large to quickly build-

¹¹ See AirTouch Comments at 6-7. See also ALLTEL Comments at 3-4 (nationwide licensing is unfair to PCS licensees).

¹² Comments of Pocket Communications, Inc., GN Docket No. 96-228, at 3-4 (filed Dec. 4, 1996) ("Pocket Comments").

¹³ Bell Atlantic/NYNEX Comments at 6-8. See also Comments of SBC Communications Inc., GN Docket No. 96-228, at 6-7 (filed Dec. 4, 1996).

out, and areas that are too small to take advantages of economies of scope and scale. Thus, utilizing MTA-based areas should lead to the rapid provision of low-cost wireless communications. Finally, the use of MTA-based areas is consistent with the doctrine of regulatory parity, as WCS licensees will be placed on the same regulatory plane as PCS licensees.

For the same policy reasons set forth by PCIA in its opening comments, the record in this proceeding shows strong support for MTA-based service areas. For example, ALLTEL favored the use of MTAs as "the most flexible and realistic opportunity for the Commission to balance the potentially conflicting goals of auction efficiency and conservation of resources with making WCS licenses available to the largest universe of potential bidders for the provision of the broadest range of services."¹⁴

Similarly, AT&T Wireless Services Inc. ("AT&T Wireless") added that awarding licenses by MTA will encourage participation by a wide range of entities, including designated entities, and will promote the development of new technologies and services. Such an approach will also reduce the financial commitment necessary to acquire a WCS license, increase the likelihood that funds from an auction can be collected by the statutory deadline, and complement the FCC's proposed disaggregation and partitioning rules as a means to encourage designated entity participation.¹⁵

¹⁴ ALLTEL Comments at 3.

¹⁵ Comments of AT&T Wireless Services Inc., GN Docket No. 96-228, at 3-4 (filed Dec. 4, 1996) ("AT&T Wireless Comments").

Finally, Bell Atlantic/NYNEX concluded that MTA-based licensing areas will promote roaming and interoperability, and allow carriers to patch together these areas into larger service areas, if desirable.¹⁶

III. MANY PARTIES FAVORED A PAIRED SPECTRUM ALLOCATION OF BETWEEN 5 AND 10 MHz

PCIA previously requested that the Commission allocate WCS spectrum in paired 5 MHz blocks, for a total of 10 MHz per licensee. The advantages of this licensing scheme are two-fold. First, it would allow for up to three licensees per licensing area, which, when combined with operators in other frequency bands, would generate a relatively high level of competition. Second, the paired nature of the allocation would allow two-way data services to be provided over WCS spectrum. As noted in PCIA's opening comments, there is currently a shortage of spectrum over which to provide such interactive, wireless data services.

Many commenters joined PCIA in stating that a paired spectrum allocation of between 5 and 10 MHz would encourage two-way services and competition. For example, BellSouth Corporation ("BellSouth") requested that licenses be awarded in two paired 6+6 MHz blocks (which would be well suited for wireless cable service) and one paired 3+3 MHz block (which would be well suited for data services and/or

¹⁶ Bell Atlantic/NYNEX Comments at 3-4. *See also* Comments of Digivox Corp., GN Docket No. 96-228, at 4-5 (filed Dec. 4, 1996) (advocating MTA-based areas); Pacific Telesis Group Comments at 2 (same); Comments of Puerto Rico Telephone Co., GN Docket No. 96-228, at 3 (filed Dec. 4, 1996) (same); PrimeCo Comments at 10.

public safety).¹⁷ Similarly, the PACS Providers Forum stated that allocating paired frequency blocks of at least 10 MHz would support the commercial development of low cost wireless local loop services and innovative complements to emerging PCS systems.¹⁸ Finally, Bell Communications Research, Inc. ("Bellcore") agreed that 10 MHz paired licenses would promote the widest range of uses of the WCS spectrum.¹⁹

IV. THE RECORD SUPPORTS ALLOCATING WCS FOR A DEFINED SET OF SERVICES, SUCH AS INTERACTIVE, HIGH-SPEED DATA SERVICES

In its opening round comments, PCIA expressed concern that unrestricted spectrum flexibility will cause uncertainty for potential bidders and equipment manufacturers, thereby leading to inefficient use of the WCS spectrum. Further, PCIA explained that the public interest would not be served by permitting WCS licensees to offer CMRS at this time, given current over supply of CMRS spectrum and developments in the nascent PCS industry. Instead, PCIA urged the Commission to dedicate WCS spectrum for high speed data services -- such as wireless Internet access services -- that are becoming increasingly valued by consumers with the rapid development of computer technology and data communications.

¹⁷ Comments of BellSouth Corp., GN Docket No. 96-228, at 8-10 (filed Dec. 4, 1996) ("BellSouth Comments").

¹⁸ Comments of PACS Providers Forum, GN Docket No. 96-228, at 3-4 (filed Dec. 4, 1996).

¹⁹ Comments of Bell Communications Research, Inc., GN Docket No. 96-228, at 3 (filed Dec. 4, 1996) ("Bellcore Comments").

Many commenters joined PCIA in asking the Commission to allocate WCS spectrum for a focused set of services.²⁰ Wireless services providers such as BellSouth and equipment manufacturers such as Motorola, Inc. ("Motorola") agreed that a clearly defined allocation would promote spectrum efficiency by allowing potential bidders and equipment suppliers to develop feasible business plans for deploying WCS to the public.²¹ In addition, AirTouch explained that a limited set of permitted services would foster the design of compatible networks, encourage the development of new technologies and services, and lead to economies of scale in network services and equipment.²² Thus, by defining a set of services for WCS and establishing minimal technical rules, the Commission can encourage the development of new services, thereby furthering the objectives of Section 309(j) of the Communications Act.

Along similar lines, many parties noted the problems that service providers, equipment manufacturers, and investors would face in making WCS available to the public if unrestricted spectrum flexibility is permitted. As explained by Lucent Technologies Inc. ("Lucent") and Motorola, because manufacturers would be unlikely to undertake the substantial capital investment necessary to develop equipment until

²⁰ See, e.g., AirTouch Comments at 4; Comments of Alcatel Network Systems Inc., GN Docket No. 96-228, at 3 (filed Dec. 3, 1996) ("Alcatel Comments"); Lucent Technologies Inc., GN Docket No. 96-228, at 3-5 (filed Dec. 4, 1996) ("Lucent Comments"); Comments of Motorola, Inc., GN Docket No. 96-228, at 2, 6-7 (filed Dec. 4, 1996) ("Motorola Comments").

²¹ BellSouth Comments at 2-6; Motorola Comments at 2, 6-7.

²² AirTouch Comments at 4-5.

after WCS licenses are awarded and services are defined, new equipment for WCS may not be available for some time.²³ Also, Lucent noted that the Commission's failure to focus its spectrum allocation has limited development and deployment of equipment in the General Wireless Services ("GWS") spectrum band.²⁴ Similarly, Alcatel Network Systems, Inc. and other equipment manufacturers explained that equipment development might be delayed further because manufacturers will encounter difficulty in determining co-channel and adjacent channel interference protection measures until other WCS providers have determined their service offerings.²⁵ AirTouch and Motorola also noted that the uncertainties created by service flexibility will lower auction values and will make it difficult for potential bidders to develop a comprehensive strategy to acquire WCS licenses.²⁶

Several parties, including mobile service providers and equipment manufacturers, also joined PCIA in urging the Commission to use the WCS spectrum for high speed, wireless data services. As typified by the Interactive Services Association and BellSouth, these commenters emphasized the need for allocating spectrum for data services to meet the growing consumer demand for a wide variety of

²³ Lucent Comments at 3-4; Motorola Comments at 2, 6.

²⁴ Lucent Comments at 4-5.

²⁵ Alcatel Comments at 3-4. Although a number of commenters supported allowing "full flexibility" for WCS spectrum, PCIA maintains that these parties did not explain how "market forces" would ensure the availability of equipment in light of the concerns expressed by equipment manufacturers. *See, e.g.*, ALLTEL Comments at 2; AT&T Wireless Comments at 7-8; GTE Comments at 3.

²⁶ AirTouch Comments at 5; Motorola Comments at 6.

interactive, high-speed data applications such as Internet access, educational applications, and video distribution services.²⁷ By allocating much needed spectrum for such services, the Commission will encourage existing mobile services providers and new market entrants to keep pace with the growing demand for data services and effectively compete with traditional wireline-based services.²⁸ Omnipoint Corp. concluded that allocating WCS for data services will encourage broad participation in a WCS auction, particularly from computer and software providers, and promote affordable Internet access for schools, libraries and medical facilities.²⁹

Finally, a number of commenters further agreed with PCIA's suggestion to exclude broadband CMRS operations from the WCS spectrum band.³⁰ Both Lucent and BellSouth explained that applications other than broadband CMRS -- such as interactive data services -- are currently underserved by existing spectrum allocations and the existing capacity of CMRS networks does not appear to warrant additional allocations at this time.³¹ In addition, Lucent noted that allocating additional CMRS spectrum might devalue recently auctioned PCS licenses, increase the financial challenges already facing PCS licensees, and reduce the willingness of investors to

²⁷ Comments of Interactive Services Ass'n, GN Docket No. 96-228, at 1-2 (filed Dec. 4, 1996) ("ISA Comments"); BellSouth Comments at 2-6.

²⁸ See BellSouth Comments at 3-5.

²⁹ Omnipoint Comments at 4-7.

³⁰ See Lucent Comments at 6-7; BellSouth Comments at 4-5; ADC Comments at 15-17; ISA Comments at 1-2.

³¹ Lucent Comments at 6-7; BellSouth Comments at 4-5.

commit additional funds to the WCS auction.³² Accordingly, these parties maintained that Commission should find uses other than broadband CMRS for the WCS spectrum.

III. COMMENTERS AGREED THAT A BUILD-OUT REQUIREMENT AND SPECTRUM CAP ARE NECESSARY TO ENSURE REGULATORY PARITY IF THE COMMISSION PERMITS CMRS OPERATIONS IN THE WCS BAND

In response to the Commission's *Notice*, PCIA proposed that build-out requirements should not apply to WCS licensees that use their spectrum to deploy high speed data services. However, in order to comply with Congressionally-mandated regulatory parity between commercial mobile service providers,³³ PCIA favored imposing a build-out requirement on any WCS licensee that provides CMRS. Similarly, PCIA suggested that a spectrum cap must apply to any WCS licensee that offers CMRS.

A number of commenters agreed with PCIA's suggestion that a build-out requirement and a spectrum cap should apply to WCS licensees that provide CMRS. Bell Atlantic/NYNEX noted that build-out requirements for CMRS offerings in the WCS spectrum band are required by Congress' mandate of regulatory parity between similar mobile services, while BellSouth added that imposing build-out requirements on CMRS operations would encourage the provision of service to rural areas and prevent warehousing of WCS spectrum.³⁴

³² Lucent Comments at 3-4.

³³ *See* 47 U.S.C. § 332(c)(1)(A).

³⁴ Bell Atlantic/NYNEX Comments at 11, 13; BellSouth Comments at 12-13.

Similarly, many commenters -- including mobile service providers such as GTE and Bell Atlantic/NYNEX -- argued in favor of applying spectrum aggregation limits to WCS licensees that provide CMRS, to the extent the Commission retains a spectrum cap for CMRS licensees.³⁵ These commenters explained that the FCC must consistently apply regulatory requirements to similar mobile services in order to maintain fair and robust competition between such service providers.

V. CONCLUSION

The WCS represents an exciting opportunity for the Commission to provide the American public with a variety of new and innovative services offered by a number of service providers. In order to take advantage of this opportunity, the Commission should define MTA-based service areas and allocate spectrum in paired blocks of between 5 and 10 MHz. The Commission should further provide the industry with clear guidance as to which services may be offered in the WCS, and consider reserving this spectrum for interactive data services, rather than CMRS that replicates broadband

³⁵ GTE Comments at 7; Bell Atlantic/NYNEX Comments at 12-13; *see also* CPI Comments at 6; Pocket Comments at 4; Comments of The Telecommunications Ass'n, GN Docket No. 96-228, at 8 (filed Dec. 4, 1996).

services for which approximately 200 MHz of spectrum has already been allocated.

Finally, if WCS providers do offer CMRS, they should be subject to build-out requirements and a spectrum cap.

Respectfully submitted,

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